IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6453 OF 2006

Mr.Victor Anthony Lobo ..Petitioner

Vs.

Mr.Noel Thomas Lobo & Ors. ..Respondents

Ms.Anita A.Agarwal for the petitioner

CORAM : A.P.DESHPANDE, J

DATED : 9TH NOVEMBER, 2006

P.C.:

1. The petitioner is the original plaintiff who instituted a Special Civil Suit for partition and claimed 1/3rd share, besides claiming accounts and mense profits. Respondent no.1 is a real brother and respondent nos.2 and 3 are wife and son of deceased brother. Defendants nos.2 and 3 by filing the written statement stated that the property cannot be partitioned. However, in the alternative, they suggested that the property be sold and each claimant be granted 1/3rd share. Defendant no.1 accepted the written statement filed by defendant nos.2 and 3 and on the said admission,

a decree came to be passed in favour of the petitioner. The decree is passed sometime in the year June 2000. On 3.2.2003 the plaintiff filed an application at Ex.10 for the accounts of the suit property in the proceedings for final decree before the trial court. On that very day, it is averred by the petitioner himself that the Trial Court advised that the preliminary decree and judgment dated 10.4.2000 does not speak of the accounts. The petitioner belatedly filed an appeal and sought condonation of delay of more than 55 months in filing of an appeal challenging the judgment and decree dt.10.4.2000. The first appellate court not being satisfied about sufficiency of the reasons for condonation of delay has rejected the application and aggrieved hereby, the present writ petition is filed. The First Appellate court has categorically found that the petitioner was informed on 3.2.2000 itself that the preliminary decree does not speak of rendition of accounts and has further concluded that there is no explanation whatsoever for the delay occasioned in filing of an appeal after 3.2.2003.

2. I have perused the order passed by the first appellate court rejecting the application for condonation of delay. It does not suffer from any legality. Hence, no interference is called for. As possible view of the matter is taken, in the result, Writ Petition is summarily rejected.

(SHRI A.P.DESHPANDE, J)